

ORIGINAL

IN THE SUPREME COURT OF OHIO

In Re: :
Kenneth L. Lawson : CASE NO. 2011-0131
1256 Koloa Street :
Honolulu, Hawaii 96816 :
Attorney Registration No. 0042468 :
Respondent : **RESPONDENT'S OBJECTIONS TO**
Disciplinary Counsel : **THE BOARD OF COMMISSIONERS'**
250 Civic Center Drive : **REPORT AND RECOMMENDATION**
Suite 325 :
Columbus, OH 43215-7411 :
Relator :

RESPONDENT'S OBJECTIONS

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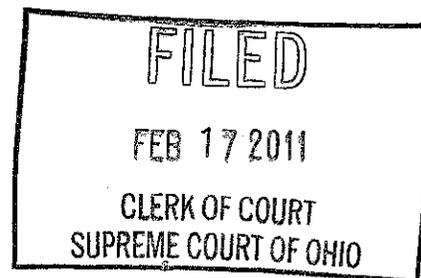
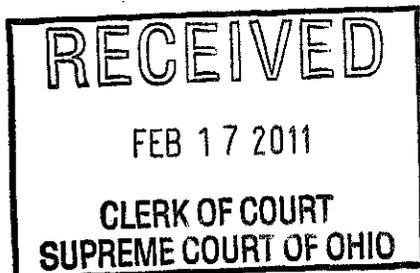


TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
I. RESPONDENT’S OBJECTIONS	1
II. STATEMENT OF FACTS	1
III. ARGUMENT	3
A. The Charges in this Disciplinary Proceeding are Barred by <i>Res Judicata</i> , Double Jeopardy, or Collateral Estoppel. (First Objection)	3
B. The Respondent’s Prior Disciplinary Offense Should Not Be Considered an Aggravating Factor in Imposing Sanctions in the Present Proceeding. (Second Objection)	10
C. Since the Specific Conduct Which is the Subject of This Proceeding is Part of the Same Pattern of Misconduct Which Has Already Been Sanctioned, Any New Sanction Should be Imposed Concurrently With the Previously Imposed Sanction. (Third Objection)	10
IV. CONCLUSION	12
PROOF OF SERVICE	14
 BOARD REPORT AND RECOMMENDATIONS	 APPENDIX A
 EXCERPTS FROM EXHIBIT A TO THE RESPONDENT’S MOTION FOR SUMMARY JUDGMENT FILED ON APRIL 5, 2010 IN THIS DISCIPLINARY PROCEEDING (TRANSCRIPT OF HEARING IN PRIOR DISCIPLINARY PROCEEDING)	 APPENDIX B

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases:</u>	
<i>Cincinnati Bar Association v. Lawson</i> , 119 Ohio St. 3d 58, 2008-Ohio-3340, 891 N.E. 2d 749, at ¶ 64	1, 2
<i>Cuyahoga County Bar Association v. Jaynes</i> (1993) 66 Ohio St. 3d 245, 611 N.E. 2d 807, 611 N.E. 2d 807	12
<i>Disciplinary Counsel v. Young</i> , 113 Ohio St. 3d 36 2007-Ohio-975, 862 N.E. 2d 504	11, 12
<i>Grava v. Parkman Twp.</i> (1995) 73 Ohio St. 3d 379, 381 1995-Ohio-331, 653 N.E. 2d 226	4, 7, 8
<i>Ohio State Bar Assoc. v. Weaver</i> (1975), 41 Ohio St. 2d 97, 99, 322 N.E. 2 nd 665	6
<i>O’Nesti v. DeBartolo Realty Corp.</i> (2007), 113 Ohio St. 3d 59, 2007-Ohio-1102, 862 N.E. 2d 803, at ¶ 6	9
<i>Risvi v. St. Elizabeth Hosp. Medical Ctr.</i> (2001) 146 Ohio App. 3d 103, 108 2001-Ohio-3412, 765 N.E.2d 395	5
<i>Township of Bainbridge v. Bainbridge Twp. Trustees</i> (1983) 5 Ohio St. 3d 41, 45, 448 N.E. 2d 1159	6
<i>Young v. Gorski</i> , 6 th Dist. No. L-03-1243, 2004-Ohio-1325, at ¶ 7	8

I.
RESPONDENT'S OBJECTIONS

Now comes the Respondent, Kenneth Levon Lawson, in response to the Order to Show Cause filed in this matter on January 31, 2111 and, for the reasons stated in his supporting brief, objects in the following respects to the Findings of Fact, Conclusions of Law and Recommendations of the Board of Commissioners on Grievances and Discipline of this Court ("the Report"):

1. The Board's finding at Page 4 of its Report that the charge of misconduct against the Respondent is not barred by *res judicata*, double jeopardy or collateral estoppel.
2. The Board's finding at Page 6 of its Report that the Respondent's prior disciplinary offense should be considered an aggravating factor.
3. The Board's finding at Page 8 and recommendation at Page 9 of the Report that the Respondent's indefinite suspension should run consecutively rather than concurrently with the Respondent's previous indefinite suspension.

The Report is attached hereto as Appendix A.

II.
STATEMENT OF FACTS

On July 9, 2008, this Court held – as Mr. Lawson had candidly and remorsefully admitted – that the Respondent had engaged in a pattern of misconduct that was “pervasive and devastating.” *Cincinnati Bar Assoc. v. Lawson*, 119 Ohio St. 3d 58, 2008-Ohio-3340, 891 N.E.2d 749, at ¶64. It also held that the pattern of misconduct ended by February of 2007 when Mr. Lawson was hospitalized and began his rehabilitation for the disease of chemical dependence. *Id.* at ¶68 *et. seq.* Based on “the evidence of Respondent's

character, reputation, remorse, chemical dependence, and recovery efforts,” this Court declined the Relator’s request for disbarment and imposed the sanction of an indefinite suspension. *Id.* at ¶72 *et. seq.*

The current disciplinary proceedings were initiated by Disciplinary Counsel on December 7, 2009 following an interim suspension imposed by this Court on July 31, 2009 as a result of Mr. Lawson’s conviction in federal court for the crime of fraudulently conspiring to obtain pain-killing drugs for his own use during the period between August 2003 and January 2007. Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio filed January 24, 2011 (“The Report”). This is precisely the same time period that was the subject of the Disciplinary Proceedings leading up to the indefinite suspension imposed by this Court on July 9, 2008.

Critical to this Court’s consideration of the Report is the fact that the Board in the current disciplinary proceedings – just as the Board and this Court in the prior disciplinary proceedings – found no misconduct occurring after January of 2007. The Board in the current disciplinary proceedings also specifically and correctly found – as did the federal court in the criminal proceedings which led to a twenty-four month prison sentence:

“The pain medication was used by the Respondent to feed his addiction. There was no evidence or suggestion that he distributed any of the medication to other persons.”

The Report, pp. 3-4.

The fraudulent conspiracy to obtain drugs between August of 2003 and January of 2007 and the ongoing criminal investigation of that conduct was known and noted during the hearing held in the prior disciplinary proceedings. The transcript of that hearing was filed on April 5, 2010 and is Exhibit A in support of Mr. Lawson’s Motion for Summary

Judgment in the present disciplinary proceeding. Pertinent excerpts from that exhibit are attached hereto as Appendix B. The criminal acts of Mr. Lawson were under investigation by the United States Attorney while the prior disciplinary hearing was being conducted. (Appendix B, pp. 216-18, 240-41, 400, 517-18). The criminal charges were filed less than sixty days after Mr. Lawson was indefinitely suspended by this Court. The Report, p. 3.

As in the prior disciplinary proceedings and in the criminal proceedings brought against him, Mr. Lawson in these disciplinary proceedings has fully admitted his guilt of the misconduct with which he has been charged.

“From the time Respondent was released from his drug treatment program at Talbott Hall in February, 2007 to the present day, Respondent has been totally forthcoming, honest and cooperative with law enforcement personnel and Disciplinary Counsel about this addiction to prescription drugs and his misconduct.”

The Report, p. 3.

III. ARGUMENT

A. The Charges in this Disciplinary Proceeding are Barred by *Res Judicata*, Double Jeopardy, or Collateral Estoppel (First Objection)

When an Ohio lawyer has been sanctioned for a pattern of conduct, an attempt to impose additional sanctions based on additional conduct which is part of the same pattern of conduct should be barred. If disciplinary proceedings are considered civil proceedings, the doctrines of *res judicata* and collateral estoppel should be deemed applicable. If they are considered quasi-criminal in nature, constitutional principles of double jeopardy should be applicable. If they are considered in some third jurisprudential category, constitutional principles of due process should bar multiple sanctions for the same pattern of conduct.

Mr. Lawson's disease of chemical dependence has made him a modern day Job. Like Simon Kenton, he has had to run the same gauntlet three times. His pattern of misconduct ended in January of 2007 – four years ago. The same pattern of conduct resulted in two disciplinary complaints and in the criminal proceedings held between the dates of the two disciplinary complaints. As the Board noted, "Respondent was sentenced to two years in prison by the United States District Court for the same actions as described in the within complaint." The Report, p. 5. As the Board also noted:

"Following his release from prison, Respondent has resided in the State of Hawaii with his wife and family. Respondent has been actively working with Alcoholics Anonymous, is providing seminars on drug and alcohol addiction to different segments of the Hawaii Bar Association and is working with the University of Hawaii, School of Law in its Innocence Project."

The Report, p. 6. It is difficult to imagine more persuasive evidence of rehabilitation and responsible citizenship.

Res judicata in its general sense refers to the preclusive effect of former proceedings. The doctrine of *res judicata* includes both claim and issue preclusion. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that has never been litigated, because of a determination that it should have been advanced in an earlier suit. Issue preclusion bars the relitigation of a matter that was actually previously litigated and decided. *Res judicata*, both issue and claim preclusion, is applicable to administrative hearings. Administrative proceedings are deemed "quasi-judicial" if notice, a hearing and an opportunity to introduce evidence are afforded. *Grava v. Parkman Twp.* (1995), 73 Ohio St. 3d 379, 381, 1995-Ohio-331, 653 N.E.2d 226.

Under Ohio law, issue preclusion applies when the following three elements are met:

1. The fact or issue was actually litigated in a prior action;
2. There was a final judgment in the prior action by a court of competent jurisdiction; and
3. The party against whom issue preclusion is sought was a party in the prior action.

Risvi v. St. Elizabeth Hosp. Medical Ctr. (2001), 146 Ohio App. 3d 103, 108, 2001-Ohio-3412, 765 N.E.2d 395.

The pattern of misconduct which was the subject of the prior disciplinary hearing was inextricably tied to the mitigating circumstance of Mr. Lawson's addiction to and illegal acquisition of prescription drugs. Disciplinary Counsel, the Relator in the present proceedings, was – along with the counsel for the Cincinnati Bar Association – the Relator in the prior proceedings. Those counsel and the Panel in the prior proceedings questioned Mr. Lawson about his conspiratorial arrangement with Dr. Broadnax, his use of clients to obtain prescription pain-killers and the then pending criminal investigation (Appendix B, pp. 132-35, 216-18, 240; *cf Id.* at p. 400). The Relator's closing arguments in the prior proceeding focused on Mr. Lawson's "pattern of conduct" and specifically referred – among the components of that pattern – to criminal conduct including theft of funds, having others obtain prescription drugs, and paying a doctor to write fraudulent prescriptions (*Id.* at pp. 507-09, 519-25).

The Panel itself noted that these components were the subject of an ongoing criminal investigation (*Id.* at pp. 217-18, 240-41, 517-18). That investigation blossomed into an agreed Information and prosecution within weeks after this Court imposed on Mr. Lawson the sanction of indefinite suspension. It would be disingenuous to argue that the

conduct which became the subject of criminal proceedings was not recognized and addressed as part of the pattern of misconduct for which that sanction was imposed. It is irrelevant to doctrines which bar subsequent proceedings that the prior disciplinary complaint did not assert a specific count of illegally obtaining prescription drugs.

“When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.”

Township of Bainbridge v. Bainbridge Twp. Trustees (1983), 5 Ohio St. 3d 41, 45, 448 N.E.2d 1159.

This Court has held that “the doctrine of *res judicata* renders final judgments conclusive only when the subsequent actions involve the same parties, or those in privity with them as in the first action, when the issues to which the evidence is directed are identical in both actions, and when the quantum of proof necessary to render both the original and subsequent judgments are identical.” *Ohio State Bar Assoc. v. Weaver* (1975), 41 Ohio St. 2d 97, 99, 322 N.E. 2d 665. Each of those three elements is present here. First, Mr. Lawson and Disciplinary Counsel were opposing parties in both proceedings. Second, the issue of illegal obtaining of prescription drugs was presented in both proceedings. Third, the burden of proof was identical in both proceedings. Disciplinary Counsel established in the first proceeding that Mr. Lawson’s pattern of conduct, which included his illegal obtaining of prescription drugs, violated a number of disciplinary rules and justified the sanction of an indefinite suspension. Issue preclusion thus bars the second proceeding.

While the legal principle articulated in the *Weaver* case is applicable here, the facts in the *Weaver* case were significantly different from those presented here. In that case the respondent had been acquitted of criminal charges which subsequently became three of ten

counts in a disciplinary case. He claimed that his acquittal should bar disciplinary proceedings arising from the conduct which was the subject of the prior criminal proceedings. His situation, however, presented only one of the three elements of issue preclusion. Both parties to the criminal case were not identical in the disciplinary case. Moreover, the burdens of proof in the two proceedings were not identical. Mr. Lawson is not claiming that his present disciplinary proceedings are barred by his prior criminal proceedings. He is claiming that his present disciplinary proceedings are barred by the resolution of his prior disciplinary proceedings. Identical parties, an identical issue, and identical burdens of proof coincide to justify that claim.

Even if the doctrine of issue preclusion were somehow deemed inapplicable to the situation presented by these proceedings, these proceedings would nonetheless be barred by the doctrine of claim preclusion. Under Ohio law, claim preclusion applies when the following four elements are met:

1. The instant action involves the same two parties;
2. The instant action arose out of the same transaction or occurrence that was the subject of earlier actions;
3. The instant action could have been litigated in the previous action; and
4. There was a final decision on the prior action by a court of competent jurisdiction.

Grava v. Parkman Twp. (1995), 73 Ohio St. 3d 379, 381, 382, 1995-Ohio-331, 653 N.E.2d 226. All four elements are satisfied here.

First, we have the same two opposing parties – Disciplinary Counsel and Mr. Lawson. The fact that the Cincinnati Bar Association is not a party in the present

proceeding does not preclude the application of *res judicata*. So long as the parties in the second action received a full and fair opportunity to litigate the issue, the first element of claim preclusion is met. *Young v. Gorski*, 6th Dist. No. L-03-1243, 2004-Ohio-1325, at ¶7.

Second, both proceedings arose out of the same transaction or occurrence – Mr. Lawson’s pattern of drug-related misconduct that ended in January of 2007. This Court has defined “transaction” as “a common nucleus of operative facts.” *Grava*, 73 Ohio St. 3d at 382. This Court expressly rejected a piecemeal approach which would vitiate the doctrine of claim preclusion by breaking down a “common nucleus of operative facts” into separate components. It adopted with approval the following language of comment c to Section 24 of the Restatement of Judgments:

“That a number of different legal theories casting liability on an actor may apply to a given episode does not create multiple transactions and hence multiple claims. This remains true although the several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts, or would call for different measures of liability of different kinds of relief.”

Grava, 73 Ohio St. 3d at 382-83. In the two disciplinary proceedings involving Mr. Lawson, each claim may place emphasis on a different element or time period of Mr. Lawson’s drug abuse. Each claim, however, specifically involves Mr. Lawson’s drug abuse and all the claims present a “common nucleus of operative facts.”

The last two elements of claim preclusion are likewise satisfied. The record of the first disciplinary proceeding reflects the knowledge of all participants that Mr. Lawson was illegally obtaining prescription drugs from Dr. Broadnax, that he was using other people to obtain prescriptions and that his conduct was the subject of a criminal investigation. The third element of claim preclusion is satisfied whenever the second action arises from the same nucleus of operative facts as the first action and the conduct alleged in the second

action occurred prior to the filing of the first action. *O'nesti v. DeBartolo Realty Corp.*, 113 Ohio St. 3d 59, 2007-Ohio-1102, 862 N.E.2d 803, at ¶6. The issues presented in the present proceeding against Mr. Lawson could have been litigated in the previous proceeding under this test. The fourth element is simply that there is a prior final and valid decision on the merits. Such a decision was issued on July 8, 2008 by this Court with respect to Mr. Lawson's pattern of misconduct.

While these proceedings can, and should be terminated by application of well-established doctrines of claim and issue preclusion, the pursuit of the present proceedings against Mr. Lawson raises alternative issues of constitutional significance. Since disciplinary proceedings involve serious sanctions, they should be considered quasi-criminal in nature. As such, the constitutional bar of double jeopardy should apply where – as here – there are successive attempts to impose disciplinary sanctions in a case involving the same operative facts and pattern of conduct.

As is apparent from the first disciplinary case against Mr. Lawson, the pattern of misconduct during the time period prior to his entrance into drug rehabilitation in early 2007 presented multiple violations of disciplinary rules and criminal statutes. Suppose Disciplinary Counsel picked three of thirty such violations and presented a “pattern of conduct” in the form of the complaint which was resolved by this Court's 2008 decision. If Disciplinary Counsel was unhappy with that result, could it have picked another three violations and filed another complaint asserting the same pattern of conduct? And if it didn't like the second result, could it have picked still another three violations and filed a third complaint asserting the same pattern of conduct? If state and federal constitutional prohibitions against double jeopardy mean anything, they should bar such successive

prosecutions. If state and federal guarantees of due process mean anything, they should bar such successive prosecutions.

B. The Respondent's Prior Disciplinary Offense Should Not Be Considered an Aggravating Factor in Imposing Sanctions in the Present Proceeding (Second Objection)

The pattern of misconduct which was the subject of the prior disciplinary proceeding includes the conduct which is the subject of this proceeding. Logic and common sense both yield the conclusion that a pattern of conduct is the sum of its parts. While the overall pattern may be aggravated by each of its parts, the reverse is not true. A part of the pattern cannot be considered to be aggravated by the pattern as a whole.

The prior disciplinary proceedings established that Mr. Lawson had engaged in a pattern of misconduct. Mr. Lawson acknowledged that conclusion and accepted the sanctions imposed for it. The present proceeding should not provide a precedent for successive prosecutions for discrete elements of a pattern of misconduct that has already been sanctioned. Is the door still open to another disciplinary proceeding against Mr. Lawson based on some other incident during his pre-2007 period of pain-killer addiction? Such a result offends basic notions of fairness, justice and due process.

C. Since the Specific Conduct Which is the Subject of This Proceeding is Part of the Same Pattern of Misconduct Which has Already Been Sanctioned, Any New Sanction Should be Imposed Concurrently With the Previously Imposed Sanction. (Third Objection)

If this Court finds that these proceedings are not barred by *res judicata*, double jeopardy or collateral estoppel, it should nonetheless reject the Board's recommendation that the sanction of indefinite suspension should run consecutively rather than concurrently with the previously imposed indefinite suspension.

We respectfully submit that the Board misread the precedent on which it relied in recommending consecutive indefinite suspensions. In that case the respondent received on September 8, 1993, a one-year suspension that was suspended subject to two years probation. Call that "Proceeding X." It is not clear when the conduct involved in that proceeding occurred, but it obviously had to be prior to 1993. On April 28, 2004, the Respondent was indefinitely suspended for conduct occurring in 1993 and in 2001. Call that "Proceeding Y." On June 13, 2005, he was charged with misconduct in a third disciplinary proceeding. Call that "Proceeding Z." On March 21, 2007, this Court in Proceeding Z imposed a sanction of indefinite suspension to run consecutively to the indefinite suspension previously imposed in Proceeding Y. *Disciplinary Counsel v. Young*, 113 Ohio St. 3d 36, 2007-Ohio-975, 862 N.E.2d 504.

In its reading of the *Young* decision, the Board in the presently pending case observed that "the subsequent 2007 consecutive indefinite suspension arose from misconduct that occurred contemporaneously with the violations involved in the 2004 and 2007 case." The Report, p. 8. It is, however, clear from a reading of the *Young* case that the misconduct for which the Respondent was sanctioned in Proceeding X and in Proceeding Y had nothing to do with the conduct involved in Proceeding Z. Moreover, it is clear, while some of the conduct in Proceeding Z occurred before the 2001 conduct involved in Proceeding Y, the Proceeding Z conduct continued into late 2003 and presumably into 2004, long after the Proceeding Y conduct.

The *Young* case is thus readily distinguishable from this case in which the conduct in question in both disciplinary proceedings was over and complete in January of 2007, a year and a half before the first indefinite suspension was imposed. In reaching its decision

in the *Young* case this Court distinguished its prior decision in the case of *Cuyahoga County Bar Association v. Jaynes* (1993), 66 Ohio St. 3d 245, 611 N.E. 2d 807, 611 N.E.2d 807. It is the *Jaynes* decision which should control the outcome of this case. In *Jaynes* this Court ordered an indefinite suspension to be served concurrently with a previously imposed indefinite suspension. Its ruling was based on the following finding of the Board:

“The Panel noted that the misconduct charged in this complaint occurred during the same period of time as that charged in his previous indefinite suspension, and that if the charges herein had been brought at that time, they would have been incorporated into those that resulted in his indefinite suspension. Accordingly, the Panel recommended that Respondent be indefinitely suspended from the practice of law and that the suspension be ordered to commence from August 1, 1990 the date of the indefinite suspension in Case No. 90-402.”

Jaynes, 66 Ohio St. 3d at 246.

IV. **CONCLUSION**

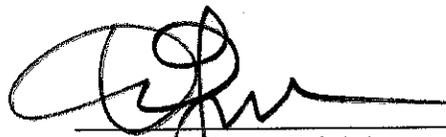
The problem at the core of these proceedings is not simply looking at two precedents, picking the one that has no application and ignoring the one that fits like a glove. It is not simply indulging in the illogical conclusion that a pattern of misconduct, instead of being the sum of its parts, is an aggravating factor to each of those parts. The core problem is the problem of multiple prosecutions for the same pattern of conduct.

As a pragmatic matter – because of the barriers of restitution to a man who by February of 2007 had lost all of his assets as a result of his drug addiction and who spent most of the next four years either in rehabilitation or in a federal penitentiary – Mr. Lawson is presently in no financial position to seek reinstatement to the practice of law.

But this case is, and this Court should be, more concerned with principles than with pragmatics. Every Ohio citizen (which includes every Ohio lawyer) has the right to due process of law. It is from that principle that legal doctrines of claim and issue preclusion and double jeopardy arise. If someone has engaged in a pattern of misconduct made up of fifty-seven discrete components, there is no legal justification for fifty-seven *seriatim* prosecutions. Jonathan Swift was speaking satirically when he said that good lawyers, like good farmers, can make multiple crops grow in a field designed for a single crop.

Addressing the problem of these proceedings at its core avoids the establishment of bad precedent. It also has the positive pragmatic impact on Mr. Lawson of removing from his shoulders that part of his restitution burden that would be represented by taxing to him the cost of proceedings that should not have been pursued.

Respectfully submitted,

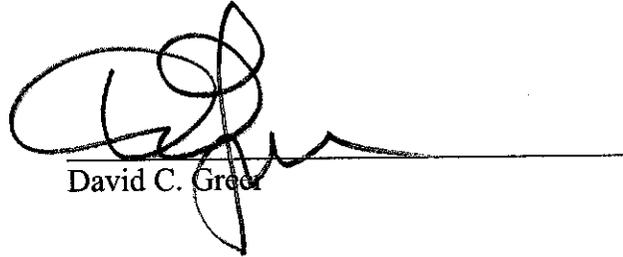


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CERTIFICATE OF SERVICE

This certifies that a true and accurate copy of the foregoing document has been served upon Robert R. Berger, Senior Assistant Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, OH 43215-7411, by First Class United States Mail, this 16 day of February, 2011.



David C. Greer

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APPENDIX A

Board Report and Recommendations

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re:	:	
Complaint against	:	Case No. 09-098
Kenneth Levon Lawson	:	Findings of Fact,
Attorney Reg. No. 0042468	:	Conclusions of Law and
Respondent	:	Recommendation of the
Disciplinary Counsel	:	Board of Commissioners on
Relator	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
	:	
	:	

This matter was heard on November 15, 2010, in Columbus, Ohio, before panel members Judge Thomas F. Bryant, of Findlay, John H. Siegenthaler, of Mansfield, and Charles E. Coulson, of Painesville, chair of the panel. None of the panel members was a member of the probable cause panel that reviewed this complaint, or resides in the appellate district from which the complaint arose. The hearing was held on the allegations contained in the complaint filed on December 7, 2009. Representing the Relator, Disciplinary Counsel, was Robert R. Berger, and representing Respondent was David Greer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The panel finds, by clear and convincing evidence, the following:

BACKGROUND

Respondent was admitted the practice of law in the State of Ohio on November 6, 1989.

Beginning in 1999, Respondent began to take medication to manage pain for a shoulder injury. By 2003, Respondent was chemically dependent on pain killers including Percodan, Percocet, and OxyContin. Respondent also used cocaine. Respondent's chemical dependency severely affected his ability to practice law. In February 2007, Respondent hospitalized himself at Talbot Hall, the Ohio State University's detoxification unit. Respondent has been sober since 2007, participated in an OLAP contract, worked with HLAP (Hawaii Lawyers' Assistance Program) and currently is actively and continuously involved in Alcoholics Anonymous.

On February 12, 2007, the Cincinnati Bar Association filed a complaint (BCDG Case No. 07-010) against Respondent alleging numerous violations of the Code of Professional Responsibility. On May 15, 2007, the Supreme Court of Ohio¹ ordered an interim remedial suspension of Respondent's license to practice law. The alleged misconduct stemmed from Respondent's handling of his clients' cases during the time period of early 2003 to February 2007.

On July 9, 2008, the Supreme Court of Ohio² indefinitely suspended Respondent from the practice of law for multiple violations of the Rules of Professional Conduct and Gov. Bar R. V(4)(G). The Supreme Court found that one of the mitigating factors applicable to the Respondent was his chemical dependence. The Supreme Court found that "Respondent has satisfied ... [the four] requirements..." of BCGD Proc. Reg. 10(B)(2)(g)(i) through (iv) and was chemically dependent from 2003 to February 2007.

¹*Disciplinary Counsel v. Lawson* (2007), 5/13/2007 Case Announcements #2, 2007-Ohio-2333.

²*Cincinnati Bar Assn., v. Lawson*, 119 Ohio St.3d 58, 2008-Ohio-3340.

On September 5, 2008, a criminal charge was filed against Respondent in the Federal District Court. The information alleged that Respondent, together with Dr. Walter Broadnax and another individual, between August 2003 and January 2007 knowingly conspired to unlawfully obtain controlled substances, namely OxyContin and Percocet, by misrepresentation or fraud. Respondent entered into a plea agreement with the United States government and was convicted of the felony of conspiracy to obtain controlled substances by deception. On April 8, 2009, Respondent was sentenced to prison for two years.

Based upon this felony conviction, on July 31, 2009, the Supreme Court of Ohio³ filed another interim suspension of Respondent's license to practice law. The Court further ordered that this matter be referred to Disciplinary Counsel for investigation and commencement of disciplinary proceedings. Based upon that Order, Disciplinary Counsel filed a one-count complaint against Respondent, at issue here.

THE COMPLAINT

Sometime prior to 2001, Respondent began representing Dr. Walter Broadnax for various matters including Bureau of Workers' Compensation investigations and potential DEA investigations. As Respondent was addicted to pain medication, Respondent began to obtain his drugs from Dr. Broadnax illegally. Between August 2003 and January 2007, while the attorney-client relationship existed between Respondent and Broadnax, Respondent conspired with Broadnax and another individual to obtain illegal prescriptions of pain medication. Dr. Broadnax wrote up to 2500 illegal prescriptions to Respondent and/or the other individual in the conspiracy. The pain medication was used by Respondent to feed his addiction. There was no

³In re *Lawson*, 7/31/2009 Case Announcements, 2009-Ohio-3752.

evidence or suggestion that he distributed any of the medication to other persons.

From the time Respondent was released from his drug treatment program at Talbot Hall in February 2007 to the present day, Respondent has been totally forthcoming, honest and cooperative with law enforcement personnel and Disciplinary Counsel about this addiction to prescription drugs and his misconduct. Relator and Respondent filed agreed stipulations with exhibits, a copy of which are attached hereto and incorporated herein.

Respondent admits that he is guilty of the misconduct. However, Respondent asserts that this charge of misconduct is barred by the doctrine of res judicata, double jeopardy, or is barred by application of the principals of collateral estoppel based upon his prior finding of misconduct, and indefinite suspension wherein his drug related misconduct and addiction were introduced as both aggravating and mitigating circumstances (BCGD Case No.07-010). The panel does not find that Respondent's charge of misconduct is barred by res judicata, double jeopardy or collateral estoppel.

Based upon the agreed stipulations, the testimony of the Respondent and the exhibits, the panel unanimously finds, by clear and convincing evidence, that Respondent violated the Code of Professional Responsibility as follows:

1. DR 1-102(A)(3), illegal conduct involving moral turpitude;
2. DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation;
3. DR 1-102(A)(5), conduct that his prejudicial to the administration or justice;
4. DR 1-102(A)(6), conduct that adversely reflects on the lawyer's fitness to practice law;

5. DR 5-101(A)(1), a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interests;
6. DR 7-102(A)(7), a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent; and
7. DR 7-102(A)(8), a lawyer shall not knowingly engage in illegal conduct.

MITIGATION

The panel finds, pursuant to BCGD Proc. Reg. 10(B)(2), the following factors in mitigation are present:

(d) Full and free disclosure to Disciplinary Board or cooperative attitude toward the proceedings.

(e) Character and reputation. Respondent submitted the transcribed testimony from Respondent's prior case (BCGD No. 07-010) of the following witnesses: Susan Delott, United States District Court Judge; Michael R. Barrett, United States District Court Judge; and Timothy S. Black, United States Magistrate, United States District Court, Southern District of Ohio. These character witnesses described Respondent as a talented trial attorney committed to an underserved client segment of the Cincinnati area. They extolled his skills, dedication, and professional largesse.

(f) Imposition of other penalties or sanctions. As previously noted, Respondent was sentenced to two years in prison by the United States District Court for the same actions as described in the within complaint.

(g) Chemical Dependency. The Panel finds that at all times material to this complaint the

Respondent was chemically dependent. Chemical dependency is of mitigating effect when evidence of the four-prong test is submitted. The first three prongs of the test including: (1) diagnosis of chemical dependency by a qualified healthcare professional or a substance abuse counselor; (2) a determination that the chemical dependency contributed to cause the misconduct; and (3) certification of successful completion of an approved treatment program, were proven at the hearing. Evidence of the fourth prong, a prognosis from a qualified healthcare professional and/or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical professional practice was not submitted at the hearing. However, the Supreme Court of Ohio in *Cincinnati Bar Assn. v. Lawson*, 119 Ohio St.3d 58, 2008-Ohio-3340, found that for this time period of 2003 through February 2007, Respondent had satisfied the fourth-prong. In fact, the Court found that Respondent had satisfied all four requirements for chemical dependency during this time period.

(h) Other interim rehabilitation. Following his release from prison, Respondent has resided in the State of Hawaii with his wife and family. Respondent has been actively working with Alcoholics Anonymous, is providing seminars on drug and alcohol addiction to different segments of the Hawaii Bar Association, and is working with the University of Hawaii, School of Law in its Innocence Project. Supporting telephone testimony concerning Respondent's work and service was given by Professors Hench and Roth of the University of Hawaii.

AGGRAVATION

The panel finds, pursuant to BCGD Proc. Reg. 10(B)(1) the following factors in aggravation are present:

(a) Prior disciplinary offense;

- (b) Dishonest or selfish motive;
- (c) Pattern of misconduct; and
- (d) Multiple offenses.

SANCTION

Relator recommended Respondent be disbarred from the practice of law. In support of Disciplinary Counsel's position, it cites the following cases: *Disciplinary Counsel v. Gallagher* (1998), 82 Ohio St.3d 51, where a former judge was disbarred after a plea of guilty to federal charges of distribution of cocaine; *Disciplinary Counsel v. Phillips*, 108 Ohio St.3d 331, 2006-Ohio-1064, where a county assistant prosecuting attorney was disbarred for accepting a bribe to fix a criminal case; *Toledo Bar Assn. v. Neller*, 98 Ohio St.3d 314, 2003-Ohio-774, where the Supreme Court disbarred an attorney for multiple convictions for conspiracy to distribute illegal drugs and advising his client in ways to avoid detection of the client's illegal activities; and *Disciplinary Counsel v. Longo* (2002), 94 Ohio St.3d 219, where the attorney was disbarred after his conviction for misprision of a felony.

Respondent freely and completely admits all of his misconduct in connection with the allegations in the complaint. However, Respondent's position is that the violation of the Rules of Professional Conduct alleged in the complaint is barred by the doctrine of res judicata or, in the alternative, the complaint violates state and federal constitutional double jeopardy prohibitions and requests that the complaint be dismissed on those legal grounds. Respondent's position is that if the complaint cannot be legally dismissed, the better course would be for Respondent to receive a consecutive, indefinite suspension as opposed to disbarment.

The panel unanimously recommends that Respondent be indefinitely suspended from the

practice of law in Ohio, and this indefinite suspension run consecutively to the indefinite suspension that Respondent is currently serving. The panel finds that precedent for imposing consecutive indefinite suspensions is found in *Disciplinary Counsel v. Young*, 113 Ohio St.3d 36, 2007-Ohio-975. In *Young* the respondent had two prior suspensions, one stayed in 1993 for neglect of client matters and the other an indefinite suspension in 2004 based on a felony conviction for obstruction of justice. The subsequent 2007 consecutive indefinite suspension arose from misconduct in a guardianship that occurred contemporaneously with the violations involved in the 2004 and 2007 case. The Court noted that “[c]onsecutive suspensions serve to ensure a lawyer’s rehabilitation and thereby protect the public from additional misconduct.” *Id.* at ¶37.

The panel also recommends that in addition to the requirements of Gov.Bar Rule V(10), Respondent must, in any petition he files for reinstatement:

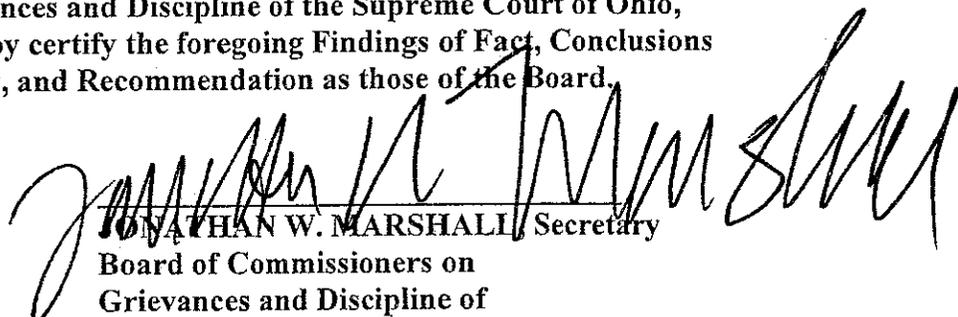
- (1) show that he has successfully completed an approved alcohol and drug abuse treatment program such as OLAP or HLAP; and
- (2) be placed on probation for a period of not less than three years and be required to
 - (1) continue treatment for a substance abuse problem under the supervision of an OLAP or HLAP monitor, and
 - (2) submit to testing to monitor and ensure sobriety, if he is reinstated.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 2, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and

recommends that Respondent, Kenneth Levon Lawson, be indefinitely suspended from the practice of law upon the conditions contained in the panel's report. This suspension is to run consecutively to the first indefinite suspension. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on
Grievances and Discipline of the Supreme Court of Ohio,
I hereby certify the foregoing Findings of Fact, Conclusions
of Law, and Recommendation as those of the Board.**



JONATHAN W. MARSHALL, Secretary
**Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO

IN RE: : CASE NO. 09-098

Complaint against
Kenneth Levon Lawson
Attorney Registration No. 0042468

Respondent,

STIPULATION

and

Disciplinary Counsel

Relator.

The Respondent and Relator hereby stipulate the authenticity and admissibility of the following facts, aggravating factors, mitigating factors and exhibits for all purposes in these disciplinary proceedings.

1. The Respondent Kenneth Levon Lawson was admitted to the practice of law in the State of Ohio on November 6, 1989, and is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar

of Ohio.

2. On May 15, 2007, the Supreme Court of Ohio ordered that Mr. Lawson be subject to an interim suspension of his law license. A copy of this Order is attached to and incorporated in these Stipulations as Exhibit A.

3. On July 9, 2008, by order of the Supreme Court of Ohio, Mr. Lawson was indefinitely suspended from the practice of law. A copy of this Order is attached to and incorporated in these Stipulations as Exhibit B.

4. For a period of years ending in January of 2007, Mr. Lawson was engaged in a conspiracy with Dr. Walter Broadnax and/or George Beatty to obtain Schedule II prescription drugs Oxycontin, Percodan and Percocet by deception.

5. Prescription drugs are classified into numerical categories according to standards prescribed by the Controlled Substances Act of 1970. The classification is based upon the risk of abuse and the need for strict regulation. Schedule II drugs such as Oxycontin and Percodan are classified as having a high potential for abuse and no automatic prescription

refill renewals are permitted.

6. On September 5, 2008, a One Count Information was filed against Mr. Lawson in the United States District Court in Cincinnati alleging that between August 2003 and January 2007 he conspired to unlawfully obtain Schedule II prescription drugs through fraud. A copy of the Information is attached to and incorporated in these stipulations as Exhibit C.

7. Conspiracy to obtain controlled substances by deception is a felony punishable by up to four years of imprisonment and a \$250,000.00 fine.

8. On September 24, 2008, a Plea Agreement was filed in the United States District Court for the Southern District of Ohio.

9. Under the terms of this Agreement, Mr. Lawson agreed to plead guilty to conspiring with Dr. Walter Broadnax, George Beatty and others to unlawfully obtain possession of Schedule II controlled substances. A copy of the Plea Agreement is attached to and incorporated in these stipulations as Exhibit D. A copy of the Statement of Facts filed in connection with the Plea Agreement is attached to and incorporated in these stipulations as

Exhibit E.

10. On September 24, 2008, Mr. Lawson entered a plea of guilty to the information, and on April 8, 2009, Mr. Lawson was sentenced to twenty-four months incarceration, one year of supervised release probation and one thousand hours of community service. A copy of the Court's Amended Judgment on Sentencing is attached to and incorporated in these stipulations as Exhibit F.

11. On July 31, 2009, the Supreme Court of Ohio suspended Mr. Lawson for an interim period pursuant to Gov. Bar R V(5) due to his felony conviction. A copy of the Court's Entry is attached to and incorporated in these Stipulations as Exhibit G.

12. Respondent has displayed a cooperative attitude during the disciplinary proceedings.

13. Respondent has been previously disciplined and was indefinitely suspended in July 2008.

14. Respondent's conduct reflects a pattern of misconduct and multiple offenses.

STIPULATED EXHIBITS

§ Exhibit A. Disciplinary Counsel v. Lawson, 113 Ohio St. 3d 1508, 2007-Ohio-

2333, 866 N.E. 2d 508.

§ Exhibit B. Cincinnati Bar Assn. v. Lawson, 119 Ohio St. 3d 58, 2008-Ohio-3340, 891 N.E. 2d 749.

§ Exhibit C. Information filed in USA v. Lawson, Case No. 1:08-CR-097.

§ Exhibit D. Plea Agreement in USA v. Lawson, Case No. 1:08-CR-097.

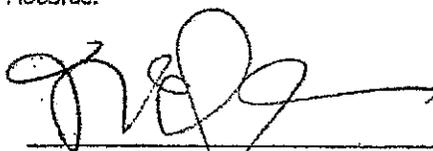
§ Exhibit E. Statement of Facts in USA v. Lawson, Case No. 1:08-CR-097.

§ Exhibit F. Sentencing Entry in USA v. Lawson, Case No. 1:08-CR-097.

§ Exhibit G. Interim Suspension Order for 2009-1163, In Re Lawson 07312009
Case Announcements 2009-Ohio-3752.

§ Exhibit H. Ohio State University Hospital Records.

§ Exhibit I. Christ Hospital Records.



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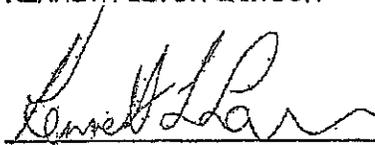
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ATTORNEY FOR RESPONDENT,
KENNETH LEVON LAWSON



KENNETH LEVON LAWSON, Respondent

APPENDIX B

**Excerpts from Exhibit A to the
Respondent's Motion for Summary Judgment
Filed on April 5, 2010 in this
Disciplinary Proceeding
(Transcript of Hearing in Prior
Disciplinary Proceeding)**

1 when you went in for treatment.
 2 A. Uh-huh.
 3 Q. Is that a fair statement?
 4 A. Yeah.
 5 Q. All right. During this time period,
 6 you used drugs every day?
 7 A. Every day.
 8 Q. And it developed to a thousand dollar
 9 per day habit, over a hundred pills a day?
 10 A. Yeah. What happened was I hurt my
 11 shoulder lifting weights, and I tore my rotator cuff.
 12 And, I mean, it's still bad today. And I went to the
 13 doctor and got Percodan, not Percocets or OxyContin,
 14 and I started taking them because I couldn't sleep at
 15 night.
 16 Then I started taking them -- I'd only
 17 take them at night, to go to sleep, or at least so it
 18 wouldn't hurt. Then I started taking them in the
 19 morning. And I'm -- just be totally honest, it just
 20 started making me feel okay.
 21 You know, it didn't put me to sleep
 22 like it does most people. It had a different effect.
 23 It made me feel like everything was all right. I
 24 didn't feel -- I wasn't scared to go into a court-
 25 room. I wasn't scared, you know.

1 couldn't sleep without them.
 2 Q. All right. So you -- you met with
 3 clients while you were high on drugs?
 4 A. I did.
 5 Q. All right. You advised clients of
 6 their legal rights while you were high on drugs?
 7 A. I did.
 8 Q. You advised clients to settle cases or
 9 to accept plea offers while you were high on drugs?
 10 A. Yes.
 11 Q. You attended court hearings while you
 12 were high on drugs?
 13 A. Yes.
 14 Q. You represented clients in trials and
 15 hearings while you were high on drugs?
 16 A. Yes.
 17 Q. All right. I think you indicated a
 18 moment ago from 2000 to February 2007 your prescrip-
 19 tion drug use was pretty continuous?
 20 A. Yes.
 21 Q. You obtained all of these prescription
 22 drugs from a doctor?
 23 A. Not all of them. Some from the people
 24 in the streets, yeah, but eventually, because the
 25 habit became so high, from a doctor.

1 And over time I had to take them to
 2 stay normal at least. You know, I didn't want to
 3 take them. I had to take them to stay normal,
 4 because I would start withdrawing off of them.
 5 And then it became Percocets because I
 6 started -- I was in Arizona and I couldn't breathe.
 7 And I didn't know that they were a depressant on your
 8 lungs. And I couldn't breathe, and I had to stay in
 9 bed the whole trip. And I -- I don't remember how I
 10 got home. I just knew it was on a plane ride.
 11 And I came back and I started taking
 12 Percocets and then OxyContin, and it just -- my
 13 tolerance level just kept growing more and more and
 14 more, you know, and I couldn't stop.
 15 I mean, I just -- I could not stop.
 16 And I remember crying, and praying to God that I
 17 don't want to be a drug addict, and taking pills at
 18 the same time. I couldn't stop.
 19 Q. And this daily drug use affected your
 20 judgment?
 21 A. Yeah.
 22 Q. All right. During this time period
 23 that you were using the drugs daily, you met with
 24 clients while you were high on drugs?
 25 A. I was high 24 hours. I mean, I

1 Q. And who was that doctor?
 2 A. Dr. Walter Broadnax.
 3 Q. Broadnax?
 4 A. Yes.
 5 Q. Do you know how to spell that?
 6 A. B-r-o-a-d-n-a-x.
 7 Q. And you paid Dr. Broadnax for writing
 8 these prescriptions for you?
 9 A. Yes.
 10 Q. And what did you pay him?
 11 A. Either a hundred dollars a script or I
 12 would do his cases for a discount or no cost.
 13 Q. And these prescriptions, they weren't
 14 written in your name, were they?
 15 A. No.
 16 Q. And that was because, if you were to
 17 order -- if you were to have that many prescriptions
 18 written in your name for those drugs, it would raise
 19 suspicion?
 20 A. Right.
 21 Q. Correct? So Dr. Broadnax wrote the
 22 prescriptions in someone else's name?
 23 A. Right.
 24 Q. All right. In fact, you provided Dr.
 25 Broadnax with the names of people to write prescrip-

1 tions for. Isn't that correct?
 2 A. That's correct.
 3 Q. And then you sent these people to pick
 4 up the prescription?
 5 A. Either that or I would -- you know,
 6 towards the end of it, I was going and getting them
 7 myself.
 8 Q. All right.
 9 A. With their names.
 10 Q. All right. And you -- these people
 11 that went and obtained these prescriptions for you,
 12 you paid them for doing this for you?
 13 A. Some of them, no. Some of them got
 14 paid; some didn't.
 15 Q. All right. And how much would you pay
 16 them?
 17 A. About \$50 to a hundred dollars.
 18 Q. Sometimes you used your employees to
 19 go get these prescriptions. Isn't that correct?
 20 A. Yeah.
 21 Q. And who were the employees that you
 22 used to do this?
 23 A. Well, I mean, I'm here to talk about
 24 my -- what I did. I don't --
 25 MR. GREER: I think I would object to

1 this on the grounds of relevance to the
 2 issues that are before this Panel.
 3 MR. BERGER: Your Honor, I would
 4 suggest that with regard to the 1-102(A)(3)
 5 violation, an attorney using their
 6 employees to obtain prescription drugs
 7 illegally --
 8 CHAIRMAN RODEHEFFER: Well, he's
 9 admitted that he's used employees. Let's
 10 just leave it at that, Mr. Berger.
 11 MR. BERGER: Can I ask him how many
 12 different employees, without asking for
 13 their names?
 14 CHAIRMAN RODEHEFFER: That's fine.
 15 Q. How many different employees?
 16 A. Maybe three or four.
 17 Q. Did you ever use any former or current
 18 clients to get the pills for you?
 19 A. Yeah.
 20 Q. And is that former clients or current
 21 clients?
 22 A. It would have been both at the time.
 23 Q. And how many times did that happen?
 24 A. I have no i-- more than once, that's
 25 for sure. I don't know.

1 Q. So during this time, people -- I'm
 2 sorry. During this time period, you were soliciting
 3 people to break the law for you?
 4 A. I just -- honestly, I thought that if
 5 the doctor wrote the script in their name, that it
 6 was legal. I know it's not.
 7 I mean, that's how -- how -- that's
 8 what I was thinking at the time. That's as honest as
 9 I can be with you. I honestly thought that if -- if
 10 you had a script from the doctor and had the person's
 11 permission, it was legal.
 12 Q. In February of 2007 --
 13 I think it was on February 1st.
 14 -- you went to Talbot Hall?
 15 A. Yes.
 16 Q. And you were admitted on that date?
 17 A. Right.
 18 Q. And according to the records, Exhibit
 19 1 in the black notebook, you left there prior to
 20 completing your treatment. Isn't that correct?
 21 A. No, no. I stayed for the -- there's
 22 five days of detox. And I didn't have any insurance,
 23 and they said, "Well, you can still come up and do
 24 our intensive outpatient."
 25 And I drove back and forth for like

1 the first two weeks in February. Then we had a big
 2 snowstorm back in the middle of February, and I
 3 couldn't get to Columbus anymore.
 4 And, in fact, I couldn't even get out
 5 of my driveway, and I started -- I mean, I hadn't
 6 been sober and clean in so many years, I wasn't used
 7 to dealing with my feelings. I started feeling a lot
 8 of anger and -- and -- and fear, et cetera.
 9 And I called a friend of mine who was
 10 a recovering alcoholic and an attorney, and he told
 11 me to go to the AA center. Because I didn't want to
 12 use the drug anymore, but I was going crazy.
 13 And I started going to the Tri-
 14 County -- I started going to a 12-step meeting near
 15 my house, and then my OLAP contact told me they were
 16 over in Christ Hospital. But I couldn't get physi-
 17 cally over and back to Columbus.
 18 Q. All right. Let's do --
 19 A. But I had to do something.
 20 Q. Let's do this, Mr. Lawson. If you
 21 could turn to Exhibit 1 in the black book of
 22 stipulations.
 23 A. Okay.
 24 Q. If you go to the second to last page
 25 of Exhibit 1 --

1 ger, the paralegal.
 2 And as time went on, I -- because I
 3 kept taking all the money to -- to supply
 4 my habit. So I was laying off people. So
 5 as time went on, she -- she -- she was
 6 doing -- trying to do everything. I know
 7 that.
 8 PANEL MEMBER MOORE: Where is she
 9 today?
 10 THE WITNESS: She has her own busi-
 11 ness. My understanding, she has her own
 12 business helping out attorneys by doing
 13 what she was doing for me. But she like
 14 doesn't work for one lawyer. You know what
 15 I mean? Like she has a paralegal service,
 16 I guess is what you would call it.
 17 PANEL MEMBER MOORE: I want to go
 18 back. I think it was Mr. Collins, again,
 19 who -- I think it was \$750 he paid to you.
 20 THE WITNESS: Right.
 21 PANEL MEMBER MOORE: You testified
 22 this morning that he tried to recover that
 23 in small claims court. Is that correct?
 24 THE WITNESS: Yeah.
 25 PANEL MEMBER MOORE: And he said

1 probably owe him some money. I do. Well,
 2 I do owe him some money, but I did -- I did
 3 write the letter and I did contact the
 4 sheriff. He was able to go out of town.
 5 We did get the warrant taken off of him and
 6 set that second court date.
 7 PANEL MEMBER MOORE: Okay.
 8 THE WITNESS: So, I mean, I did do
 9 something, but, I mean, after everything I
 10 did, there was really nothing I could do.
 11 Did you follow me?
 12 PANEL MEMBER MOORE: Uh-huh. In your
 13 representation of criminal clients, did you
 14 ever represent anyone on deception to
 15 obtain or illegal processing of drug docu-
 16 ments?
 17 THE WITNESS: I've represented one guy
 18 about ten years ago that doctor-shopped.
 19 He was like seeing three or four different
 20 doctors.
 21 PANEL MEMBER MOORE: You're at least
 22 somewhat familiar with the law regarding
 23 that activity?
 24 THE WITNESS: Oh, I'm not disputing,
 25 yeah, but at the time I'm -- all I can tell

1 you're actually fighting that and you've
 2 asked for a trial. And I guess, since
 3 you're admitting you're responsible to give
 4 that back --
 5 THE WITNESS: I didn't --
 6 PANEL MEMBER MOORE: -- I don't under-
 7 stand why you're fighting it. Or is that
 8 inaccurate?
 9 THE WITNESS: Well, he -- he's right
 10 that -- that I filed a demand when I first
 11 came back, because I didn't know where and
 12 what was going on until I did the research.
 13 So I filed a demand to stop it from going
 14 through.
 15 But since then I haven't paid atten--
 16 I -- I thought he had a judgment against
 17 me. Because I wasn't contesting that, no.
 18 So that's --
 19 David probably asked have you got a
 20 judgment against him. Since May I haven't
 21 followed it.
 22 PANEL MEMBER MOORE: Okay. So he does
 23 not have a judgment, but you're also not
 24 actively contesting it?
 25 THE WITNESS: No. I'm saying that I

1 you is what I was thinking then, and I
 2 wasn't doing too much thinking. But
 3 that's -- that's as honest as I can be with
 4 you. I mean, that's the truth.
 5 PANEL MEMBER MOORE: My -- my question
 6 is more you testified that you thought it
 7 was legal for your employees and your
 8 clients and other people to be filling your
 9 prescription as long as a doctor had writ-
 10 ten the prescription.
 11 THE WITNESS: To them, right.
 12 PANEL MEMBER MOORE: But is it legal
 13 for a doctor to write a prescription to
 14 someone he's never seen or heard of, other
 15 than you giving a name to?
 16 THE WITNESS: No. I'm -- as I sit in
 17 front of you today, I know that. But
 18 all -- all I'm telling you is exactly what
 19 happened, and all I was thinking about was
 20 getting what I needed to get me through.
 21 I'm not -- period. I wasn't researching
 22 it. I -- I did that. I'm not saying what
 23 I did was right. It was definitely wrong.
 24 PANEL MEMBER MOORE: Are you saying
 25 you knew that the doctor writing those

1 prescriptions wasn't right?
 2 THE WITNESS: Right.
 3 PANEL MEMBER MOORE: And so you knew
 4 it was illegal for these people to be
 5 filling these prescriptions for you.
 6 Correct?
 7 THE WITNESS: Yeah. I -- yeah.
 8 PANEL MEMBER MOORE: Is that doctor --
 9 was it Broadnax? Is he being investigated
 10 and are you cooperating with that investi-
 11 gation?
 12 THE WITNESS: That's what we're
 13 intending on doing, yes. And you're right.
 14 Yeah, he's being investigated.
 15 PANEL MEMBER MOORE: He's being inves-
 16 tigated?
 17 THE WITNESS: That's my understanding.
 18 PANEL MEMBER MOORE: And your intent
 19 is to cooperate with that?
 20 THE WITNESS: Yes.
 21 PANEL MEMBER MOORE: You made a state-
 22 ment, when you were testifying earlier,
 23 that you filed a lot of frivolous lawsuits.
 24 When were those suits filed, over what
 25 period of time?

1 and --
 2 PANEL MEMBER MOORE: I'm not necessar-
 3 ily asking about ones that you've been
 4 sanctioned for.
 5 THE WITNESS: That's what I was refer-
 6 ring to earlier. That's what I meant
 7 earlier.
 8 PANEL MEMBER MOORE: You understand
 9 frivolous lawsuits are not appropriate?
 10 THE WITNESS: I do.
 11 PANEL MEMBER MOORE: Can you tell us a
 12 little bit about when did your family find
 13 out what was going on? When did you dis-
 14 close to them, and are they on board with
 15 your treatment?
 16 THE WITNESS: I don't know when my
 17 wife -- I knew she suspected, but I know
 18 she definitely knew that she used to find
 19 pills around the house and used to tell me
 20 to go to treatment.
 21 My mother didn't know, because I
 22 wasn't -- ever since George died, I with-
 23 drew from trying to be close with anybody,
 24 because I didn't want to go through that
 25 hurt again. So my mother didn't know.

1 THE WITNESS: No, I -- I said I've
 2 filed one, and that was -- in fact, that
 3 was one in 2004 or '5. And I didn't think
 4 it was frivolous, but that's what they
 5 ruled it.
 6 The two judges down here didn't think
 7 it was frivolous. The Court of Appeals
 8 ruled that it was. Because they had made
 9 it through all these other motions. So
 10 I -- so -- so I got sanctioned for filing
 11 one, even though at the time that's not
 12 what I believed I was doing.
 13 PANEL MEMBER MOORE: Unless I misheard
 14 it, though, this morning you said that you
 15 had filed -- I forget what your description
 16 was, but numerous or lots or something, but
 17 you talked about frivolous lawsuits and you
 18 said more than one.
 19 THE WITNESS: Well, I mis-- yeah, then
 20 I misspoke and it was wrong. What I --
 21 what I meant to say was I had filed a
 22 frivolous lawsuit before that I got
 23 sanctioned for.
 24 Now, at the time that I filed it I
 25 didn't think it was frivolous, you know,

1 I asked my wife, when I got back from
 2 detox, you know, how she felt, and she
 3 said, you know, there -- as many times as
 4 she told me to go, her response was "I knew
 5 you weren't going to be done until you were
 6 done," and in other words --
 7 It's hard for me to put it. I wanted
 8 to answer the question, though.
 9 PANEL MEMBER MOORE: When did she
 10 start asking you to go to detox or rehab?
 11 THE WITNESS: Probably like a year
 12 before I ended up there.
 13 PANEL MEMBER MOORE: So early 2006,
 14 probably?
 15 THE WITNESS: We -- we had been sepa-
 16 rated for -- like twice during 2000 and
 17 2006, so probably -- that's my recollec-
 18 tion. She may have a different one.
 19 A lot of stuff she tells me I did I
 20 don't remember doing. But I don't have no
 21 reason to dispute it.
 22 I do remember she -- I used to tell
 23 her -- because she would say, "Are you" --
 24 I would say, you know, I quit or something
 25 like that, you know.

1 it just made me feel better. All right?
 2 And then it's such a powerful physical
 3 addiction I need to take one to feel
 4 normal. I could go in a courtroom just --
 5 I'm not saying I performed stellar, you
 6 know, and -- and work.

7 But what was happening was I was just
 8 taking all the money to support my habit.
 9 I had to lay off all the other attorneys.
 10 So when I would get back to the office, I
 11 just couldn't keep up with the paperwork.
 12 Most of it's paperwork and -- and the
 13 scheduling and stuff.

14 I think I tried a murder case in
 15 January before I went -- maybe December or
 16 sometime in -- you know, a few months
 17 before I went to treatment, and --

18 But once I got back from court, I just
 19 couldn't function. I mean, not like I
 20 would just physically fall out, but I just
 21 couldn't -- I couldn't do the paperwork.
 22 It was just too much.

23 PANEL MEMBER VUKOVICH: Okay.

24 THE WITNESS: I don't know if that
 25 answers your question or not, but I -- I

1 could go to court and do things that I had
 2 been trained to do for years, but I could
 3 not do the work of four or five lawyers
 4 that I had to get rid of to support that --
 5 you know, when I was supporting my habit
 6 over the years. It just all crashed down.

7 PANEL MEMBER VUKOVICH: I think that's
 8 all I need to ask at this session. Thank
 9 you.

10 CHAIRMAN RODEHEFFER: A couple of
 11 factual questions. I'm trying to find them
 12 now.

13 PANEL MEMBER VUKOVICH: Do you want me
 14 to ask a few more questions while you're
 15 looking for them?

16 CHAIRMAN RODEHEFFER: Oh, on the Marx
 17 case --

18 I call it the Marx case, whatever.

19 THE WITNESS: Right.

20 CHAIRMAN RODEHEFFER: -- who got paid
 21 and who didn't? We know --

22 MR. GREER: I think our Exhibits 8 and
 23 9 are cover letters to Mr. Maccani.

24 CHAIRMAN RODEHEFFER: You mean in the
 25 packet, this packet?

1 MR. GREER: In the back of it, yes.

2 CHAIRMAN RODEHEFFER: Okay.

3 MR. BERGER: I believe that Exhibits
 4 H, 8 and 9 are the three proofs of payment.

5 CHAIRMAN RODEHEFFER: Thank you, sir.

6 PANEL MEMBER VUKOVICH: Oh. Not --
 7 not to go back on a painful subject, what
 8 was the date of your brother's death?

9 THE WITNESS: It was like -- it --
 10 it -- I think he had been there for three
 11 days. January.

12 CHAIRMAN RODEHEFFER: What year?

13 THE WITNESS: '96. Between January
 14 18th and January 21st, somewhere around
 15 there.

16 CHAIRMAN RODEHEFFER: Okay. Has the
 17 prospect of criminal prosecution against
 18 you come up at all?

19 THE WITNESS: Yes. And we told them
 20 we would cooperate in their investigation,
 21 too.

22 CHAIRMAN RODEHEFFER: So at this point
 23 you are unaware of any imminent or pending
 24 criminal charges against you personally?

25 THE WITNESS: I know there is an

1 investigation, and we said we would
 2 cooperate in it.

3 CHAIRMAN RODEHEFFER: All right.
 4 Chambers' money --

5 Because it's Hanson now.

6 -- the \$10,000, did we decide, did
 7 that go through your account?

8 THE WITNESS: It went through Lawson
 9 and Washington, yes.

10 CHAIRMAN RODEHEFFER: And at some
 11 point during that August to October, that
 12 money would have been divided between you
 13 and Mr. Washington?

14 THE WITNESS: That's correct.

15 CHAIRMAN RODEHEFFER: Has Ms. Chambers
 16 gotten any of her money back?

17 THE WITNESS: No, but --

18 CHAIRMAN RODEHEFFER: Go ahead.

19 THE WITNESS: -- I plan on making
 20 restitution to everybody, no matter what
 21 happens here.

22 CHAIRMAN RODEHEFFER: That leads me to
 23 my next question. How is that going to
 24 happen? I mean, you've told us you've got
 25 \$900,000 worth of debt. It sounded to me

1 have even had a baseball bat used in that.
2 He was severely beaten and that
3 vehicle was part of that getaway, so the report filed
4 with us was basically to cover the damage to the
5 vehicle.

6 And through that investigation that --
7 that -- I guess the lady reported it to her firm and
8 hired him as an attorney to represent her. Our --
9 you know, once I found out that Cincinnati was
10 looking into it, my part of it was just to close the
11 offense.

12 But for our city to have that occur
13 requires her signing some form saying they no longer
14 want to pursue any criminal charges, or an arrest is
15 made or warrants are signed. That's the only three
16 ways we can actually put a closed stamp on a case.

17 Mr. Lawson agreed to have her do that,
18 with the understanding I would not file charges
19 against his client.

20 And shortly after that occurred, the
21 Cincinnati detective who was involved in that filed
22 charges against her, and I testified in juvenile
23 court as to what occurred in what city and what my
24 agreement with Mr. Lawson was. And I believe the
25 case was dismissed.

1 MR. ROSENWALD: I was thinking.

2 Sorry.

3 CROSS-EXAMINATION

4 BY MR. ROSENWALD:

5 Q. Detective Grindle, if a person was
6 brought to your attention, as a detective investigat-
7 ing crimes, and the person confessed that he had used
8 other people to obtain prescription medications for
9 him, that he either would pay them or find some other
10 method of remuneration, if you will, had a doctor
11 write prescriptions in volume, paying him for that
12 without being diagnosed with anything, would you
13 consider that to be a crime or crimes?

14 A. Yes, sir.

15 Q. I think it's illegal processing of a
16 prescription document or something to that effect?

17 A. Yes, sir.

18 Q. Okay. Is that something that, if it
19 came to your attention, that you would be very
20 concerned about and would do whatever is necessary
21 to, if appropriate, prosecute that person?

22 A. We would definitely look into that as
23 a criminal offense.

24 MR. ROSENWALD: Okay. Thank you.

25 CHAIRMAN RODEHEFER: Mr. Berger?

1 Q. What have been your observations, from
2 the eyes of -- of a law enforcement person, of Mr.
3 Lawson's handling of himself as a criminal defense
4 lawyer?

5 A. My involvement with him has always
6 been professional. I've not had any issue with Mr.
7 Lawson. Everything I've dealt with with Mr. Lawson
8 has been professional.

9 Q. And have you observed his skills in a
10 courtroom?

11 A. I think we've only had one trial
12 together, but yes.

13 Q. And what were your observations in
14 that regard?

15 A. Professional.

16 Q. Have you had any observations of him
17 in his role as a community leader or representative
18 with respect to the Cincinnati black community?

19 A. Since I'm from Springdale area, North
20 College Hill, I have not made it too much into Cin-
21 cinnati. I mean, there's always news articles,
22 there's news clippings, and from what I've heard.
23 But personal knowledge, I have not.

24 MR. GREER: All right. I think that's
25 all I have, then. Thank you.

1 MR. BERGER: Nothing, your Honor.

2 CHAIRMAN RODEHEFER: Nothing from the
3 Panel.

4 Thank you, Mr. Grindle.

5 (Witness excused.)

6 MS. MORMAN: Etta Lawson.

7 ETTA M. LAWSON

8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MORMAN:

11 Q. Would you like the television cameras
12 and audio turned off or on?

13 A. It doesn't matter.

14 Q. Okay. Could you state your name for
15 the Panel, please.

16 A. Etta M. Lawson.

17 Q. And do you currently live in Cincin-
18 nati?

19 A. All my life.

20 Q. And what do you do for a living?

21 A. I run a daycare center. And I've been
22 doing it now for over 20 years.

23 Q. Okay.

24 A. And I enjoy what I do very much.

25 Q. Okay. And are you Mr. Lawson's

1 I've seen him work.
 2 He and I may have drastically differ-
 3 ent styles in approaching cases, but I
 4 think we both have the same belief in
 5 making sure clients receive justice. So
 6 I'm sad to see that happen, that I have to
 7 talk to this Panel and use a couple of
 8 words in a little while that I don't want
 9 to use, but I have to.
 10 The second thing that saddens me is
 11 what you heard today from witnesses on his
 12 behalf, that he was a good lawyer, that he
 13 fought hard, and the biggest problem that I
 14 see is this community is going to lose
 15 another black lawyer.
 16 Clyde Bennett was referenced by Judge
 17 Dlott, and, unfortunately, Clyde is going
 18 to lose his license at some point. When, I
 19 don't know. But those two, I would think,
 20 and there's maybe another one who would be
 21 considered the top black lawyers doing
 22 criminal defense work. So we lose them,
 23 and I think that is a problem for our
 24 community.
 25 But be that as it may, I set aside

1 to 2003, if I recall correctly is the
 2 earliest date of client representation in
 3 this case, up to and including virtually
 4 May 15th of 2007, when the interim suspen-
 5 sion became effective.
 6 -- we have not only the cases that are
 7 part of our Complaints, but we also have
 8 the cases that you can see that are refer-
 9 enced in the motion for interim suspension.
 10 I'm not going to talk about anything else
 11 except those matters.
 12 But look at the pattern of conduct.
 13 What we have is a significant amount, and I
 14 couldn't tell you the dollars, but a
 15 significant amount of dollars that have
 16 been taken from clients who did not receive
 17 the service that they were to receive.
 18 The Supreme Court as recently as a few
 19 weeks ago, I think it's Jurczenko, J-u-r-
 20 c-z-e-n-k-o, used language that they've
 21 used in the past: "accepting legal fees
 22 and the failing to carry out a contract for
 23 employment is tantamount to theft of client
 24 funds and, coupled with neglect, the his-
 25 tory of this conduct, and other discipli-

1 what I feel and what I care about, that is,
 2 quality representation of the poor, the
 3 black, the poor white, the indigent, every-
 4 body who is faced with the criminal justice
 5 system.
 6 And I have to ask this Panel, when you
 7 review everything, to recommend permanent
 8 disbarment. It is not something that I
 9 take lightly when I say that. It's not
 10 something -- in fact, this is the first
 11 time I've ever asked a Panel to do that.
 12 And I know that Mr. Lawson has come in
 13 and his witnesses have talked about the
 14 potential for the future. The difficulty I
 15 have is what's occurred in the past.
 16 What I would like to do, if you don't
 17 mind, is we have prepared a memo that talks
 18 about our recommended sanction, and I,
 19 quite frankly, will be repeating --
 20 Rob, do you have one?
 21 MR. BERGER: Yes. Thank you.
 22 MR. ROSENWALD: Okay.
 23 I have to ask it because, when we look
 24 at what occurred here --
 25 A pattern of conduct which goes back

1 nary infractions, is cause for disbarment."
 2 And the other cases that we cite go along
 3 the same lines.
 4 We have that pattern of misconduct.
 5 We have theft of funds. We have neglect.
 6 We have all the infractions that we have
 7 placed before the Panel that show that in
 8 this case permanent disbarment is
 9 appropriate under the rulings from the Ohio
 10 Supreme Court.
 11 In addition to that, we have admis-
 12 sions under oath of criminal conduct. As
 13 yet, not prosecuted. Apparently there is
 14 an investigation that is going on, per the
 15 testimony of Mr. Lawson and his indication
 16 that he would cooperate with it.
 17 His testimony alone shows his involve-
 18 ment by having others obtain prescription
 19 drugs for him, by paying a doctor to write
 20 prescriptions for him. That's of great
 21 concern, in addition.
 22 It's like I say, I've never had to say
 23 this before to a Panel, but I think I'm
 24 bound by my oath. I think I'm bound by my
 25 responsibility under the Code of Profes-

1 and we talk about reinstatement under condi-
2 tions of probation. Does the Cincinnati
3 Bar have any program to monitor probation-
4 ers who are addicted?

5 MR. ROSENWALD: I don't -- I don't
6 think we have a specific program. I know
7 we work with OLAP. Well, there's already a
8 contract with OLAP. That's a starting
9 point.

10 I know that when we are -- when
11 someone is placed on probation, we have to
12 appoint a member of the committee as a
13 monitor or supervisor or probation officer
14 or whatever you call them. So we have the
15 ability at least to make sure they're
16 compliant. If we had to find a program,
17 there's plenty of programs.

18 CHAIRMAN RODEHEFER: I was just
19 wondering, for instance, if one of the
20 conditions imposed by the Supreme Court,
21 who, by the way, ultimately is going to
22 decide this --

23 MR. ROSENWALD: Right, exactly.

24 CHAIRMAN RODEHEFER: -- was that there
25 would be some type of testing, is there

1 responsibility. It's just that simple. I
2 mean, that's why I'm here now. My goal is
3 to uphold --

4 CHAIRMAN RODEHEFER: Sure.

5 MR. ROSENWALD: -- our profession.

6 CHAIRMAN RODEHEFER: Very good.
7 Judge?

8 PANEL MEMBER VUKOVICH: (Shaking
9 head.)

10 PANEL MEMBER MOORE: If I understand
11 you correctly, you're not conceding there
12 is a drug addiction; you are, in fact,
13 challenging that?

14 MR. ROSENWALD: I'm questioning it.
15 I'm questioning it, and it's simply because
16 all I have is self-reporting. When you
17 go --

18 And I have to start with Columbus at
19 the Talbot Hall.

20 -- and look at the paperwork we've
21 been provided, and it is self-reporting.

22 When -- and I've never done this, but
23 I've had so many clients go through. They
24 go in, they are interviewed by a social
25 worker or someone of that nature, and it's

1 some way the Cincinnati Bar or some
2 organization within the Bar could monitor
3 whether he's being tested and maybe even
4 prompt the tests so that they are random,
5 that type of thing.

6 MR. ROSENWALD: Oh, there are two
7 facilities that the Court uses through the
8 probation department for random drug test-
9 ing of probationers. I am -- and it's
10 cheap, relatively. 20, 25 bucks per test.

11 We would put the onus on the attorney
12 to pay for it, but we could -- and maybe
13 I'm sticking my neck out, because if it
14 happens, I might be the monitor.

15 But we would -- just the same way the
16 probation department is. You call -- well,
17 they have to call probation when a number
18 of a caller comes up. But we call them:
19 Go take the test.

20 I can see that is a possibility. It
21 puts more burden on us, on the grievance
22 committee, but if our goal is the protec-
23 tion of the public --

24 CHAIRMAN RODEHEFER: Yeah.

25 MR. ROSENWALD: -- then we take the

1 all self-reporting: Are you having this
2 problem, that problem?

3 Give me one urine -- what's so hard to
4 give me a urine test from February the 1st
5 of 2007 that's positive for Percodan?

6 PANEL MEMBER MOORE: Well, my concern
7 is more why we don't have a negative one.
8 But that set aside, have you contacted the
9 police to find out if they are investigat-
10 ing the doctor who was writing these
11 scripts and whether they, in fact, have
12 verified that that activity was going on?
13 Because that would be the easy way to find
14 out.

15 MR. HOLLINGSWORTH: Could I add
16 something?

17 MR. ROSENWALD: Well, let me answer
18 that.

19 Yesterday I looked up and was sur-
20 prised to see a police officer here, and I
21 asked him what he was doing, you know.
22 "Well, I came to listen."

23 They won't tell us whether there is or
24 is not an investigation going on. But I
25 think if he's here to see what's testified

1 to, I would say there's an investigation
 2 going on.
 3 CHAIRMAN RODEHEFER: And I don't think
 4 we need to get into matters that are not
 5 being sworn to.
 6 MR. ROSENWALD: Yeah. I mean, I'm
 7 just answering a question.
 8 CHAIRMAN RODEHEFER: Yeah. Okay.
 9 Thank, you Mr. Rosenwald.
 10 MR. ROSENWALD: Okay. Thank you.
 11 CHAIRMAN RODEHEFER: Okay. Let's go
 12 with you, Mr. Berger, and then we'll let
 13 Mr. Greer. We'll hear both of you once.
 14 Oh, I'm sorry.
 15 MR. HOLLINGSWORTH: I was just going
 16 to respond to a question.
 17 CHAIRMAN RODEHEFER: Oh, okay.
 18 MR. HOLLINGSWORTH: I did have contact
 19 with US Attorney Ken Parker. He's here in
 20 Cincinnati. He was not able to give me any
 21 information other than to tell me there was
 22 an investigation, but he didn't identify
 23 who was under investigation.
 24 CHAIRMAN RODEHEFER: Thank you very
 25 much.

1 matter. Respondent stipulated to that
 2 aggravating factor as well.
 3 Vulnerability of victims and resulting
 4 harm. Clients were abandoned after their
 5 fees were collected. Funds and fees were
 6 stolen.
 7 Failure to make restitution. I paged
 8 through the Complaint and was able to count
 9 up about \$27,000 in fees that were paid or
 10 funds that were taken.
 11 Let's talk about the mitigation. The
 12 Respondent's wife testified that his addic-
 13 tion was out of control in 2005, when all
 14 of their personal items were repossessed
 15 and seized, bills weren't being paid.
 16 Around that same time the Respondent
 17 acknowledged his addiction to his wife. He
 18 knew he had problems. His wife advised
 19 him: You need to quit; you need to find a
 20 way to get out of this. He tried to quit
 21 on his own and was unable. So he continued
 22 to practice law. He didn't seek out pro-
 23 fessional treatment.
 24 He's an educated man. He knew what
 25 the next step was. Instead, he went back

1 MR. BERGER: Afternoon. I, too, don't
 2 relish the thought of being here today and
 3 making this closing. Nonetheless, the
 4 facts and the case law from the Supreme
 5 Court of Ohio require me to make it.
 6 First, I'll note that there were
 7 several violations in Count XVII and Count
 8 XIX that were not stipulated to. I think
 9 the evidence is pretty clear demonstrating
 10 the (A)(3), (A)(4), (A)(5) and 9-102(B)(4)
 11 violations, so I won't belabor those unless
 12 the Panel has any questions. Instead,
 13 let's talk about the aggravating factors
 14 present in this matter.
 15 Respondent had a dishonest and selfish
 16 motive. He lied to his clients. He took
 17 client funds for his own personal use. He
 18 lied to both Relators to conceal his
 19 thefts, misconduct, and multiple offenses.
 20 Respondent engaged in a pattern of
 21 misconduct and multiple offenses. The
 22 Respondent stipulated to that aggravating
 23 factor.
 24 Respondent made repeated false state-
 25 ments during the investigation of this

1 to his addiction and continued to practice
 2 law and used the proceeds from that
 3 practice to feed his addiction.
 4 The Respondent's testimony and the
 5 testimony of various witnesses have also
 6 suggested that there were several experi-
 7 ences that the Respondent had in his child-
 8 hood and his adult life that were very
 9 traumatic to him.
 10 It's also been suggested and permeated
 11 the testimony that these hardships may have
 12 contributed to his conduct. I just want to
 13 note for the Panel the Respondent has not
 14 sought any professional treatment to deal
 15 with any of these underlying issues. So
 16 whatever problem they created for him has
 17 yet to have been addressed by the Respon-
 18 dent.
 19 The Supreme Court has previously
 20 stated that the presumptive sanction for
 21 misappropriation of client funds is
 22 disbarment. In the present matter, the
 23 Respondent has admitted he spent an entire
 24 \$21,000 in settlement funds and that he
 25 converted fees, paid to him for clients,

1 for his own personal use.
 2 It's a 20-count Complaint: 17 cli-
 3 ents, by my count, multiple instances of
 4 dishonesty, conversion, neglect, failure
 5 to carry out a contract for employment,
 6 failure to refund client retainers, conduct
 7 adversely reflecting on his fitness to
 8 practice law, failing to properly manage
 9 client funds and failing to cooperate in
 10 the investigation of this matter.
 11 There's a case that the Supreme Court
 12 of Ohio decided, let's see, in November
 13 of -- I'm sorry, in March of last year,
 14 March of 2006, Disciplinary Counsel versus
 15 Phillips.
 16 Mr. Phillips was an assistant prose-
 17 cutor in Cuyahoga County. He had a drug
 18 problem. Cocaine, I believe. He attempted
 19 to make deals with defendants where for
 20 some money he would fix their cases.
 21 He was diagnosed as having a chemical
 22 dependency and that was favored upon him as
 23 being a mitigating factor in his discipli-
 24 nary proceeding.
 25 Nonetheless, the Court observed that

1 the Phillips case, and one of the Justices
 2 asked, "If this isn't grounds for disbar-
 3 ment, what is?"
 4 That's the question I kept coming back
 5 to. Based upon all the evidence in this
 6 matter, the conclusion I have is the recom-
 7 mendation that's proper in this case is for
 8 disbarment.
 9 And I did have a copy of the Phillips
 10 case if the Panel --
 11 CHAIRMAN RODEHEFER: Great.
 12 MR. BERGER: Finally, there was a
 13 question that you had asked about other
 14 cases that may have involved substance
 15 abuse as mitigation, yet where the Court
 16 decided to weigh it differently.
 17 There were several other cases that I
 18 took a look at that I'll just mention to
 19 you. Disciplinary Counsel versus Wherry,
 20 W-h-e-r-r-y, Disciplinary Counsel versus
 21 Madden, M-a-d-d-e-n, and Cleveland Bar
 22 Association versus Dixon, D-i-x-o-n.
 23 Thank you.
 24 CHAIRMAN RODEHEFER: Don't leave. You
 25 would admit, Mr. Berger, that there are

1 his mitigation of chemical dependency must
 2 be weighed against the seriousness of the
 3 rule violations.
 4 The Court weighed the seriousness of
 5 the rule violations against the mitigation,
 6 including the chemical dependency, and
 7 found that his egregious misconduct merited
 8 disbarment.
 9 I argue today that this is a similar
 10 instance in which the Respondent's egre-
 11 gious misconduct between 2003 and 2007 far
 12 exceeds the mitigation present.
 13 This is more than an attorney that was
 14 addicted and neglected a few cases and took
 15 some fees and didn't do the work. Respon-
 16 dent has an extensive and sustained pattern
 17 of misconduct.
 18 By his own testimony, he was using his
 19 law office as a criminal enterprise and
 20 using his own employees and former and
 21 current clients to obtain drugs for him.
 22 Like the Phillips case I was just
 23 speaking about, Respondent's misconduct is
 24 more than a lapse in judgment caused by
 25 drugs. I attended the oral argument for

1 also cases involving facts not dissimilar
 2 to these, where there are actually crimi-
 3 nal convictions, in which the Court: two
 4 years or indefinite suspension?
 5 MR. BERGER: I'm not aware of any case
 6 that has this set of facts or a similar set
 7 of facts that resulted in anything less
 8 than an indefinite suspension.
 9 Based upon the extent, the breadth,
 10 the depth, the level of dishonesty with
 11 everyone involved, and the criminal conduct
 12 taking place in the office, that's the
 13 basis for us advocating for disbarment.
 14 CHAIRMAN RODEHEFER: Thank you.
 15 Mr. Greer?
 16 MR. GREER: Why are we here? We're
 17 here because one of the best trial lawyers
 18 in the city of Cincinnati developed an
 19 addiction to opiates.
 20 And the one thing that I didn't fore-
 21 see at all, and I'll confess it, was that
 22 someone would stand up here and have the
 23 temerity to argue that that's a hoax, that
 24 he really wasn't addicted to opiates.
 25 If you look at the records -- I guess